

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE A2P SMS)	
ANTITRUST LITIGATION)	
)	
)	
)	MASTER FILE. 12 CV 2656 (AJN)
This Document Relates to:)	
)	
)	
ALL ACTIONS)	
)	

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT
OF A MOTION TO PARTIALLY LIFT STAY
AND TO DISMISS DEFENDANT AIR2WEB, INC.**

Plaintiffs understand that, following the conclusion of a bankruptcy proceeding in the United States Bankruptcy Court for the District of Delaware, administered under case number 13-12878, Defendant Air2Web, Inc. no longer exists and is no longer solvent. Accordingly, Plaintiffs have agreed to dismiss their claims against that entity. Under Federal Rule of Civil Procedure 41(a)(1), Plaintiffs request that this Court's stay should be lifted for the limited purpose of entertaining and deciding this motion and that Defendant Air2Web, Inc. be dismissed.

On September 16, 2013, in a Memorandum and Opinion (ECF No. 225), this Court stayed this action as to all defendants pending an arbitration to which Air2Web, Inc. is not a party. Op. at 52. Lifting the stay for the limited purpose of allowing dismissal of a Defendant that is not a party to the arbitration and whom Plaintiffs may dismiss by right under Federal Rule of Civil Procedure 41(a)(1), will not undermine the purpose of the stay to prevent duplicative proceedings in the ongoing arbitration and here. *See In re Paspt Licensing GmbH Patent Litig.*, Civ. Action No. 99-md-1298, Ref. C.A. 99-3118, 2006 WL 1004990, at *2 (E.D. La. Apr. 10,

2006) (partially lifting stay of all proceedings pending resolution of remanded claims to allow focused discovery where “the rationale for the stay will not be undermined”).

Accordingly, Plaintiffs request that the Court lift the Stay for the limited purpose of dismissing Defendant Air2Web, Inc., and that that Defendant Air2Web, Inc. be dismissed, with each party to bear its own costs and attorneys’ fees.

Dated: February 19, 2015

Respectfully submitted,

KAPLAN FOX & KILSHEIMER LLP

By: /s/ Gregory K. Arenson

Robert N. Kaplan
Richard J. Kilsheimer
Gregory K. Arenson
Elana Katcher
850 Third Avenue, 14th Floor
New York, NY 10022
Telephone: (212) 687-1980
Facsimile: (212) 687-7714
Emails: rkaplan@kaplanfox.com
garenson@kaplanfox.com
rkilsheimer@kaplanfox.com
ekatcher@kaplanfox.com

Plaintiffs’ Lead Counsel

CUNEO GILBERT & LADUCA, LLP

Jonathan W. Cuneo
Joel Davidow
Matthew E. Miller
507 C Street, N.E.
Washington, D.C. 20002
Telephone: (202) 789-3960
Facsimile: (202) 789-1813
Emails: jonc@cuneolaw.com
joel@cuneolaw.com
mmiller@cuneolaw.com

KOHN SWIFT & GRAF, P.C.

Joseph C. Kohn
One South Broad Street, Suite 2100
Philadelphia, PA 19107
Telephone: (215) 238-1700
Facsimile: (215) 238-1968
Email: jkohn@kohnswift.com

Attorneys for Plaintiffs